

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 141 (McGuire) – As Amended June 22, 2015

SENATE VOTE: 38-0

SUBJECT: Humboldt Bay Harbor, Recreation, and Conservation District Act: land grants, acquisitions, and dispositions.

SUMMARY: Clarifies that the Humboldt Bay Harbor, Recreation, and Conservation District (District) is authorized to sell or transfer certain property, and makes several other changes to the District's Act. Specifically, **this bill:**

- 1) Enacts several changes to the District's Act, including the following:
 - a) Deletes language requiring that irrevocable grants of fee title be granted or issued, thereby deleting an inconsistency in the District's Act;
 - b) Clarifies the responsibilities of the chief executive officer (CEO) and the Treasurer of the District;
 - c) Prohibits the District from making an expenditure of trust moneys from the Humboldt Bay, Harbor, Recreation, and Conservation District Fund (Fund) to purchase or otherwise acquire real property without first having provided at least 90 days' written notice of the proposed expenditure to the State Lands Commission (SLC);
 - d) Requires the notice to include the total amount of the proposed expenditure from the Fund, the location of the real property, the purpose of the purchase or acquisition, and an explanation of how the purchase or acquisition is consistent with the terms of the trust grant;
 - e) Provides, in the event that the SLC does not object within 90 days of receipt of the notice, the District, may proceed with the purchase or acquisition; and,
 - f) Requires the District to give the SLC at least 90 days' written notice of a proposed disposition of any interest in real property if the interest was acquired by the District with revenue generated from the granted lands, and requires the notice to include the proposed consideration to be received by the District, the location of the real property, and the purpose of the disposal.

EXISTING LAW:

- 1) Establishes the District, and provides, through the District's Act, for the District's powers and authority, the territory of the District, the jurisdiction of the District, the conduct of the District's hearings, election of the Board of Commissioners (Board), and the powers and duties of the Board and of the District.

- 2) Requires, for the District, that all grants, franchises, leases, permits, rights, or privileges must be made in accordance with such rules and regulations as the Board shall prescribe by resolution, and requires irrevocable grants of fee title to be granted or issued.
- 3) Allows the Board to employ engineers, attorneys and any other officers and employees necessary in the work of the District.
- 4) Requires the CEO to appoint a treasurer whose duty it shall be to receive and safely keep all moneys of the District, and requires the CEO to comply with all provisions of law governing the deposit and securing of public funds. Requires the CEO to pay out moneys only as authorized by the Board and not otherwise, provided, however, that no authorization shall be necessary for the payment of principal and interest on bonds of the District. Requires the CEO, at regular intervals, at least once each month, to submit to the secretary of the District a written report and accounting of all receipts and disbursements and fund balances, a copy of which report the CEO shall file with the Board. Requires the treasurer to execute a bond covering the faithful performance by him of the duties of his office and his duties with respect to all moneys coming into his hands as treasurer in such an amount as shall be fixed by resolution of said Board. Requires the surety bond to be executed only by a surety company authorized to do business in California and the premium therefor to be paid by the District. Requires the bond to be approved by the Board and filed with the secretary of the District. Requires the treasurer, before entering upon the duties of the office, to take and file with the secretary of the District the oath of office required by the California Constitution.
- 5) Allows the District to take by grant, purchase, gift, devise, lease or otherwise acquire, hold and enjoy and lease and dispose of real and personal property of every kind, within the District, necessary to the full or convenient exercise of its powers.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, this bill contains negligible state costs.

COMMENTS:

- 1) **Bill Summary.** This bill clarifies that the District is authorized to sell or transfer certain property, and makes several other changes to the District's Act. This bill is sponsored by the SLC.
- 2) **Background.** The District is a trustee of sovereign lands granted to it by the Legislature in the 1970s. These lands are considered "granted lands" by the SLC which maintains oversight authority. The District is governed by the specific granting statute(s), the common law Public Trust Doctrine and other applicable law.

Revenues generated by a trustee arising out of the use or operation of its granted lands are public trust assets of the state and must be reinvested back into the trust. These revenues must be kept separate from the general funds of a local government and may not be used for any purpose unconnected with the trust. Expenditures of trust funds by a trustee must be consistent with the common law Public Trust Doctrine and the statutory trust grant.

While granted public trust lands and assets are managed locally, the Legislature delegated the state's residual and review authority for granted lands to the SLC. The SLC is responsible for monitoring administration of each statutory grant by the trustee to ensure compliance

with provisions of the granting statute and the Public Trust Doctrine. The SLC has the authority to investigate, audit, and review the administration of all statutory trust grants. The SLC also has the authority to investigate specific allegations of maladministration, to seek corrective measures by trustees, and make recommendations to the Legislature; the ultimate trustee of public trust lands.

In the course of conducting a review of a mismanagement allegation against the District (which the SLC did not find), SLC staff discovered an ambiguity in the granting statutes relative to the District's authority to dispose of property acquired after the initial grant ("after-acquired property"). Existing law bars any grantee from transferring, selling or otherwise alienating sovereign tide and submerged lands. However, the statute governing the District restricts its ability to dispose of any lands ("Irrevocable grants of fee title shall not be granted or issued." (see §23, c. 1040, Statutes of 1976)).

- 3) **Author's Statement.** According to the author, "The Humboldt Bay Harbor, Recreation and Conservation District (District) is trustee of lands granted to it by the Legislature when California became a state. SB 141 seeks to clarify that the District is authorized to sell or transfer property that has been acquired or deeded to it since the original land grant.

"California acquired ownership of submerged lands, tidelands and waterways (sovereign lands) in 1850, and made the District the trustee for these lands. The District and state manage these lands for the benefit of the public for the use of aquaculture such as oysters and clams, fisheries, navigation, visitor-serving facilities, water related recreation, open space and habitat preservation. The state constitution prevents these lands from being sold, and the District is *not* looking to sell any of these lands.

"In 1970, the Legislature passed a law (Chapter 1283, Statutes of 1970, Section 28) that authorized the District to acquire and dispose of other property, referred to as "after acquired lands." While the 1970 law intended to give the District permission to buy, own and sell "after acquired lands" (non-sovereign lands), it appears that was not written precisely enough to allow the District to actually sell these lands.

"SB 141 simply deletes this prohibition relating to the transfer of irrevocable grants of fee title, specific to after acquired lands. This solution was suggested by the State Lands Commission. By eliminating this restriction it will provide much needed clarification of the District's ability to manage lands it is entrusted to oversee by the state. This is necessary so that the District can dispose of after-acquired lands. The funds can then be used by the District to reinvest into improving and administering its trust lands within the Humboldt Bay Harbor, Recreation, and Conservation District for the public's benefit, use and enjoyment."

- 4) **Arguments in Support.** Supporters argue that the District's Act has a vague provision that has the potential to restrict the District's ability to sell or transfer after-acquired property, which is typically allowed because these lands do not have the restrictions on alienation that exist with sovereign tide and submerged lands, and that this bill eliminates the prohibition on transferring irrevocable grants of fee title as it related to after-acquired lands.
- 5) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

State Lands Commission [SPONSOR]
California Special Districts Association
Humboldt Bay Harbor, Recreation, and Conservation District
Humboldt County Board of Supervisors

Opposition

None on file

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